

Minutes of the Zoning Board of Appeals Meeting of January 20, 2005

7:00 p.m.

MEMBERS PRESENT: **Regis Barrett, Chairman**
 Jeanne Hartman
 Bob Kinney
 Bob Kappler
 Joe Salem

ALSO PRESENT: **Tom Ockington, Building Commissioner**
 Diane Schiavone, Acting Secretary

Chairman – I would like to call the Zoning Board of Appeals Meeting to order. Roll call was taken and all members were present. **A motion to approve the Minutes from September 16, 2004 was made by Jeanne Hartman. Seconded – Bob Kinney. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kappler, Bob Kinney, Joe Salem.**

Item #1 – Stella Buszko, 4760 Sunny Lane

Stella Buszko was present along with her son Joe Buszko to request variances to install a six (6) foot tall shadowbox fence in the side yard approximately one (1) foot off of the neighbor's driveway to the rear of the property and a decorative fence in the front yard located at 4760 Sunny Lane. Also present was Frank Nunnari of 4756 Sunny Lane along with his attorney, Matthew T. Fitzsimmons.

Mrs. Buszko stated her request for erecting a fence in the side and front yards are for numerous reasons pertaining to the neighbor who resides at 4756 Sunny Lane. She stated she had previously installed a temporary snow fence parallel to the side of her house in the past two (2) winters, but the fence has become damaged due to the neighbor shoveling snow against it. At this time, Mrs. Buszko also provided photos and noted she previously had bushes planted along the side of the house but recently had them removed. She believes the years of ice and snow piled on them during the winter months by the neighbor caused them to die. Bob Kinney inquired as to the placement of the fence parallel to Mr. Nunnari's garage and the distance involved. Mrs. Buszko could not give an approximate measurement. Mrs. Buszko and Joe Buszko stated there was an encroachment onto their property by Mr. Nunnari's recently installed driveway. Chairman, Regis Barrett stated that the encroachment issue would not be addressed at this meeting and becomes a civil matter. Joe Salem inquired about the meter located on the side of Mrs. Buszko's house and access to it should the proposed fence be installed.

Attorney Matthew Fitzsimmons then spoke on behalf of Mr. Nunnari. He began by stating that Mr. Nunnari objects to the variances being requested and asks that the Board uphold the Building Department's decision to deny the request. Mr. Fitzsimmons stated it is unclear by the drawing submitted what type of fence is to be installed in the side and front yards. Chairman Regis Barrett noted Mrs. Buszko currently has a three (3) foot tall decorative fence in her front yard and wishes to match that in the front yard. Mr. Fitzsimmons stated the construction of a fence in the front yard of Mrs. Buszko's residence will cause an obstruction of view for anyone backing their cars out of Mr. Nunnari's driveway. Mr. Fitzsimmons stated that the construction of a fence parallel to Mr. Nunnari's driveway will cause a hardship on Mr. Nunnari and his wife entering and exiting their cars because of its close proximity. Mr. Fitzsimmons suggested the proposed fence be moved closer to Mrs. Buszko's

house and recited a portion of the Zoning Code. Chairman Regis Barrett suggested Mr. Fitzsimmons read the entire Code pertaining to this issue and review the pictures submitted by Mrs. Buszko. Bob Kinney asked Service Director, Bob Kappler what the normal parking space width is. Bob Kappler responded it was nine (9) to ten (10) feet in width. Mr. Kinney then stated Mr. Nunnari's current driveway measures ten (10) feet in width, with another foot to the proposed fence. At this time Joe Buszko voiced his opposition to the width of Mr. Nunnari's driveway citing it is eleven (11) feet wide and there is concrete on the tree lawn and a City inspector has stated it needs to be removed. Chairman Regis Barrett stated that issue has no connection to these variances. Jeanne Hartman inquired as to the position of the proposed fence in the front yard and Building Commissioner, Tom Ockington responded that her request requires a variance per the Code. Mr. Fitzsimmons then referred to the portion of the Code which prohibits a fence to be installed in the side yard greater than the distance to the residential structure. Chairman Regis Barrett stated that decision is to be granted or denied by the Board. Mr. Fitzsimmons then mentioned the encroachment issue and Chairman Regis Barrett again noted it is a civil matter that the Board of Zoning Appeals will not discuss. Jeanne Hartman stated she had observed no other fences on the street between the houses.

Chairman Regis Barrett asked what both sides would be willing to do in order to resolve the problems at hand. Mrs. Buszko stated the problems have existed as long as both of the residents have lived there. At this time Chairman Regis Barrett called Mr. Nunnari forward and asked him what he's willing to do to resolve the situation. Mr. Nunnari stated he has not intentionally shoveled snow onto Mrs. Buszko's property and will try to be more careful about snow removal.

Chairman Regis Barrett asked for questions from the Board. Bob Kinney voiced his opposition of a fence of any size beyond the front corner of Mrs. Buszko's residence and stated the drawing submitted to install a fence parallel to Mr. Nunnari's garage is insufficient and requires more detail. A brief discussion was held by the Board Members regarding the measurement between Mr. Nunnari's garage and the proposed placement of the fence by Mrs. Buszko and the maintenance of the property. Mr. Kinney suggested the proposed fence in the side yard could run parallel to Mr. Nunnari's garage and go straight back rather than jog to the right or stop at the corner of the garage. Jeanne Hartman suggested installing a temporary snow fence approximately one (1) foot away from her basement windows. Mrs. Buszko responded she did not want to give Mr. Nunnari use of the remaining grassy area.

Chairman Regis Barrett then questioned Mr. Nunnari regarding the peach tree at the corner of his garage. Mr. Nunnari responded by saying that he would be willing to cut the peach tree down to show his willingness to cooperate.

A motion to deny the request for variances was made by Regis Barrett. Regis Barrett stated Mr. Nunnari has agreed to cut down the peach tree that has been a source of conflict and would make more of an effort to keep snow off of Mrs. Buszko's property. Joe Salem then asked Mrs. Buszko if the Board denies the variance for the fence in the side yard does she still want to construct a fence in the rear yard; is it all or nothing? Mrs. Buszko replied that she wants it all. Building Commissioner, Tom Ockington then stated that Mrs. Buszko doesn't require a variance to install a fence in the rear yard. Joe Salem then recanted his last question.

Chairman Regis Barrett again stated Mr. Nunnari has agreed to cut down the peach tree and is willing to make more of an effort to keep snow off of Mrs. Buszko's property and is making a motion to deny the variances based on Mr. Nunnari's statements, citing that if it doesn't work out in a period of time, Mrs. Buszko may return to the Board with photos of

what's happened and the issue will be re-visited and possibly grant a variance. The Acting Secretary then asked for a Second. The vote was seconded by -- Jeanne Hartman.

Mrs. Buszko then questioned why she can't install a fence from the front of the house to where the shrubs are. Chairman Regis Barrett asked Building Commissioner, Tom Ockington the specific location of the proposed decorative fence. Chairman Regis Barrett and Building Commissioner Tom Ockington consulted with Mr. Nunnari regarding the decorative fence, and Mr. Nunnari did not object if the fence was located two (2) feet from the property line.

Chairman Regis Barrett proposed that a compromise may be acceptable to allow the decorative fence to be installed in the front yard, two (2) feet from the property line.

Chairman Regis Barrett then withdrew his motion to deny all variances. A motion to deny variance 1117.05 (c) 3 was made by Regis Barrett. Seconded – Joe Salem. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kappler, Joe Salem, and Bob Kinney.

A motion to deny variance 1117.05 (c) 4 was made by Regis Barrett. Seconded – Bob Kinney. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kappler, Joe Salem, and Bob Kinney.

A motion to grant variance 1117.05 (c) 1 was made by Regis Barrett to be two (2) feet off of the driveway and six (6) feet in length. Mrs. Buszko then asked why she has to remain two (2) feet off the driveway when Mr. Nunnari is already encroaching on her property? Joe Salem stated the Board is granting a variance to install a decorative fence to be located two (2) feet off of Mr. Nunnari's driveway and will not address the issue of encroachment. Mrs. Buszko stated she will install the fence where her shrubs are located. Mrs. Buszko questioned that her bushes were indeed two (2) feet off of Mr. Nunnari's driveway and asked why should she have to trim her bushes to please Mr. Nunnari?

A motion to deny all variances was made by Bob Kappler. Seconded – Jeanne Hartman. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kappler, Joe Salem, and Bob Kinney.

Item #2 – Marge Norton, 8952 Springcrest Drive

Marge Norton was present to request a variance to install a three (3) foot tall picket fence in the front yard located at 8952 Springcrest Drive. She is asking for the variance because the neighbor houses his refuse containers in the side yard and she would like to shield them from her view. A brief discussion was held regarding the placement of the decorative fence and the property line. Bob Kinney inquired if the applicant wanted to change the type of fence being requested from a picket fence to a board on board fence which would match the remaining board on board fence being constructed in the side yard. Marge Norton said that she would consult with the contractor and see if she could change the style of fence. A motion was made to approve the request noting that if Mrs. Norton consulted with the contractor and decided to change the style of the fence, she is permitted to make application to the Board of Zoning Appeals for review at their February, 2005 meeting. The motion to approve the variance was made by Bob Kappler. Seconded – Joe Salem. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kappler, Bob Kinney and Joe Salem.

New Business: Election of Officers for the Year 2005:

A motion to nominate Regis Barrett as President was made by Bob Kappler. Seconded – Joe Salem. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kappler, Bob Kinney and Joe Salem.

A motion to nominate Jeanne Hartman as Vice-Chairman was made by Bob Kinney. Seconded – Bob Kappler. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kinney, Bob Kappler and Joe Salem.

Motion to Adjourn – Regis Barrett. Seconded – Bob Kinney. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kappler, Bob Kinney and Joe Salem.

Diane Schiavone, Acting Secretary

Regis Barrett, Chairman